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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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June 11, 1993

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Donna R. Searcy, Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: MM Docket No. 93-91
FM Table of Allotments

Dear Ms. Searcy:

Enclosed herewith, on behalf of Kingsley H. Murphy, Jr., licensee of Station WISS-FM, Berlin, Wisconsin, are an original and four (4) copies of his "COMMENTS OF KINGSLEY H. MURPHY, JR." in the above-referenced proceeding.

Please direct all inquiries and communications concerning this matter to the undersigned.

Very truly yours,


Jerold L. Jacobs

Enc.

cc: As on Certificate of Service (all w/enc.)

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JUN 11 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations
(Berlin, DeForest, and
Wautoma, Wisconsin

)
)
) MM Docket No. 93-91
)
) RM-8197
)
)

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

COMMENTS OF KINGSLEY H. MURPHY, JR.

KINGSLEY H. MURPHY, JR. ("Murphy"), licensee of Station

WISN-TV, Madison, Wisconsin, has filed the following comments:

NPRM directs Murphy to show cause why, in light of the foregoing, WISS-FM's license should not be modified as proposed.

2. In these Comments, Murphy is not asserting any technical engineering defect concerning DeForest's proposal vis-a-vis WISS-FM. However, Murphy notes that DeForest's May 20, 1993 "Comments" in response to the NPRM fail to reiterate DeForest's previous commitment to reimburse Station WISS-FM for its frequency-changing expenses in the event that DeForest is the ultimate permittee of Channel 226A at DeForest. Murphy considers this omission to be a very serious matter, because Commission precedent is clear that Murphy's frequency cannot be changed without such a reimbursement commitment. See Circleville, Ohio supra. Hence, Murphy urges that DeForest's proposal should be denied, unless DeForest restates its reimbursement commitment.

3. Moreover, the Commission recognized in Circleville, Ohio, supra, that the timing of a frequency change for an operating station such as WISS-FM is a more complex matter than usual, where, as here, there is the potential for a comparative broadcast proceeding to select the ultimate permittee of Channel 226A at DeForest and it literally may take years before a construction permit is actually issued. There does not appear to be a reimbursement commitment-making requirement in the application process (as opposed to the DeForest allotment process).

4. For these reasons, Murphy is firmly opposed to being forced to change WISS-FM's frequency through this proceeding

with no awareness of who the ultimate reimbursing permittee will be and no reimbursement commitment from any of the possible permittees. Murphy is aware that his concern is partly addressed by the Commission's policy that "it is generally not necessary for the change to take place until utilization of the existing frequency actually prevents a newly authorized station from inaugurating service". See Albany, Buffalo, Illion and Utica, New York, 2 FCC Rcd 4300 (MMB 1987), and Broken Arrow and Bixby, Oklahoma, 4 FCC Rcd 6981 (1989). However, in light of the indicated uncertainties of time and permittee, Murphy maintains that, assuming that the WISS-FM frequency change is approved in this proceeding, WISS-FM should not be required even to file its implementing Form 301 minor modification application until the identity of the ultimate permittee of Channel 226A is known and that permittee has given Murphy a reimbursement commitment.

5. In other words, Murphy urges that any frequency change Order directed to WISS-FM should not contain the usual requirement that WISS-FM should submit an implementing application within 90 days of the effective date of the Order. Rather, Murphy should not be required to file any modification application until 90 days after the selection of an ultimate permittee for Channel 226A becomes final and Murphy receives a reimbursement commitment from said permittee.

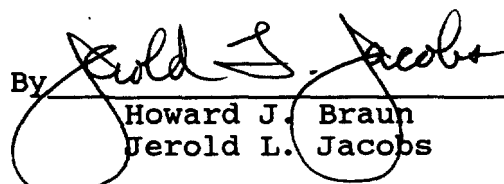
6. Murphy submits that this proposal is fully consistent with Circleville, Ohio, supra at 163 (reimbursement commitment needed) and 164-65 (special ordering clauses

covering the possibility of a comparative hearing). In addition, Murphy's proposal does not conflict with the Commission's general policy that, absent a factual basis for questioning a party's financial ability to reimburse, "the time and manner of reimbursement [are left] to the good faith negotiations of the parties". Castle Rock, New Mexico, 7 FCC Rcd 7668, 7670 ¶9 (MMB 1992). Here, Murphy is not questioning any party's financial ability to reimburse, but rather is trying to ensure that he receives a timely and appropriate commitment to reimburse.

WHEREFORE, in light of the foregoing, Murphy respectfully requests that the Commission should not amend the FM Table of Allotments as proposed in the NPRM unless DeForest Broadcasting Company restates its reimbursement commitment to WISS-FM and any resulting Report and Order in this proceeding contains ordering clauses consistent with Murphy's proposal in Paragraph 5, supra.

Respectfully submitted,

KINGSLEY H. MURPHY, JR.

By 
 Howard J. Braun
 Jerold L. Jacobs

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His Attorneys

Dated: June 11, 1993

CERTIFICATE OF SERVICE


I, Yvonne Corbett, a secretary in the law offices of Rosenman & Colin, do hereby certify that on this 11th day of June, 1993, I have caused to be mailed, or hand delivered, a copy of the foregoing "COMMENTS OF KINGSLEY H. MURPHY, JR." to the following:

Michael C. Ruger, Chief*
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 8318
Washington, D.C. 20554

Ms. Kathleen Scheuerle
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Yvonne Corbett

***BY HAND**